



The ERISA Industry Committee

Driven By and For Large Employers

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California Secure Choice Retirement Savings Investment Board
915 Capitol Mall
Room 435
Sacramento, CA 95814

Dear Ladies and Gentlemen,

The ERISA Industry Committee (“ERIC”) is pleased to provide comments on the California Secure Choice Retirement Savings Investment Board’s (the “Board”) draft emergency regulations for its Secure Choice Program.

I. ERIC’S INTEREST IN THE DRAFT REGULATIONS

ERIC is the only national association that advocates exclusively for large employers on health, retirement, and compensation public policies at the federal, state, and local levels. ERIC members provide comprehensive retirement benefits to tens of millions of active and retired workers and their families. ERIC therefore has a strong interest in the Board’s draft regulations, which could have an impact on its members’ ability to continue providing competitive and cost-efficient retirement plans.

ERIC supports efforts to enhance and promote retirement savings opportunities, including state-run retirement programs that create safe, simple, and portable savings plans for employees. But, we oppose any regulations that would conflict with the framework and guidelines established under the Employee Retirement Income Security Act of 1974 (“ERISA”). ERISA enables employers to tailor voluntary retirement plans that meet the needs of their workforce and sets forth the rules employers must follow. A major provision of ERISA is the preemption of state laws and regulations of employer-sponsored retirement plans. This preemption provision allows employers with employees in more than one jurisdiction to follow a uniform set of rules that promote predictability and fairness.

ERIC appreciates the opportunity extended by the Board to provide comments before the formal rulemaking process begins. In particular, ERIC values the opportunity to comment on the section pertaining to exempting employers, Section 10004, that already provide employees access to a tax-favored retirement savings plan.

II. RECOMMENDATIONS

Employer plan sponsors of tax-qualified retirement plans currently operate under immense compliance burdens. Any mandates imposed at the state level on employers that sponsor a tax-

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qualified retirement plan could raise ERISA concerns for the state plan, and would only decrease the likelihood of employers offering a quality retirement plan.

ERIC applauds the current version of the draft emergency regulations, which provides for an optional self-certification process for an employer to be exempt from the Secure Choice Program (the “Program”). ERIC encourages the Board to keep this language consistent throughout the rulemaking process, and not add any new compliance mandate that would increase the cost to operate a tax-favored retirement plan.

a. Identify Exempt Employers Through Optional Self-Certification

As you know, the Board is considering three options for how employers who provide a tax-qualified retirement plan will be exempt from the Program: (1) encouraging optional self-certification via the web, (2) required self-certification via the web, and (3) required self-certification via State tax form.

A large number of tax-qualified plans file the annual Form 5500 with the Department of Labor (“DOL”), a requirement under ERISA. The Form 5500 data is made available to the public via the DOL website with the ability to easily search and cross-reference the data. Based on the information provided by the Board, the Program would utilize the Form 5500 database to develop a list of ERISA-qualified employers in California, while leaving the option open for employers to self-report. Using the Form 5500 database would be advantageous not only to employers who already sponsor a tax-qualified retirement plan but to the Program’s staff as well. Administratively, the Program would use an existing system and developed infrastructure that has been in place for decades. This would allow the Program to use its resources on more pertinent matters, such as increasing participation from employees who work at a company that does not provide a tax-qualified retirement plan. On the employer side, nothing would need to be completed in addition to the required federal filings. Plan sponsors could continue to operate their retirement plan without any additional compliance burdens.

b. Subjecting Plan Sponsors to Reporting Requirements Would Be a Violation of ERISA

Reporting is an essential feature of ERISA. Equally as essential is ERISA’s preemption rules, which supersedes any and all state laws that relate to any employee benefit plan. Here, that would be an employer’s tax-favored retirement plan; thus, any provision or aspect of the Program that relates to or attempts to govern that which ERISA already governs would be superseded. To use a method that mandates reporting not provided for or in addition to the reporting requirements under ERISA would trigger ERISA’s preemption clause and could open the door to possible litigation. We encourage the Board to maintain the first option, optional self-certification, throughout the regulatory process. A movement towards the second or third option, which mandate reporting on an employee benefit plan would be seen as a violation of federal law.

In a presentation made to the Board at its November 27, 2017 meeting, language was included that stated it would take 2-minutes on average for a plan sponsor to self-certify. Based on the information that we have gathered from our members, this is unequivocally false. For large employers, it is likely that the company has a number of legal entities within the state. Depending

on how the Program is setup, a large employer may need to certify all of its legal entities which can be a time-consuming process. Further, if more states implement a state-run mandatory retirement plan that imposes complex reporting requirements on plan sponsors of tax-qualified retirement plans, a drastic increase in compliance tasks would occur on the plan sponsor. This compliance burden would be felt most by employers that are already doing what you want other employers in California to do—provide a quality retirement plan to employees.

III. CONCLUSION

Ultimately, ERIC shares your goal of increasing retirement access for employees who are employed in the State of California and do not have access to an employer-sponsored plan. For employers that already provide a retirement plan for employees, it is important that they are able to design plans that work effectively, efficiently, and based on the needs of their workforces and industries in which they operate.

ERIC appreciates the opportunity to provide comments on the Board's draft regulations. If you have any questions concerning our comments, or if we can be of further assistance, please contact us at (202) 789-1400 or bhum@eric.org.

Sincerely,

A handwritten signature in blue ink that reads "Bryan Hum". The signature is fluid and cursive, with the first name "Bryan" and last name "Hum" clearly distinguishable.

Bryan Hum
Associate, Retirement & Compensation Policy